

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SHAWN ANTHONY ALLICOCK, a# 42-682-523,

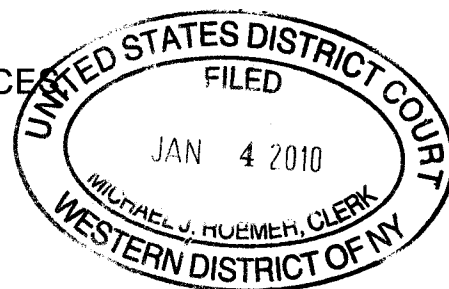
Petitioner,

-v-

DECISION AND ORDER
09-CV-0866M

DEPARTMENT OF HOMELAND SECURITY,
UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES

Respondent.



Petitioner, Shawn Anthony Allcock, who claims he entered the United States as a Lawful Permanent Resident on or May 11, 1991, filed a self-titled petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241, seeking judicial review of a denial by respondent Department of Homeland Security, U.S. Citizenship and Immigration Services ("USCIS") of his N-600 Application for derivative citizenship pursuant to Section 322 of the Immigration and Nationality Act, 8 U.S.C. § 1433. The Administrative Appeals Office of USCIS dismissed petitioner's appeal from a decision of the District Director, New York, New York on May 21, 2008, and

petitioner seeks review of said dismissal and decision.¹ (Docket No. 1, Petition, Exh. 2, Decision of Administrative Appeals Office, dated May 21, 2008).

Upon filing of the petition, petitioner paid the \$5.00 filing fee for the filing of a petition for a writ of habeas corpus but because the petition was, in effect, a complaint seeking judicial review of a decision of USCIS, it was construed by the Court as a complaint seeking review of denial of the N-600 Application, and petitioner was therefore directed to either pay the remaining amount of the filing fee for civil actions or to file an application to proceed *in forma pauperis*. (Docket No. 2). Petitioner filed an application to proceed *in forma pauperis* and because petitioner has met the statutory requirements the application is granted. See 28 U.S.C. § 1915(a). The Clerk of the Court is directed to cause the United States

¹ The Court's initial order in this matter noted that judicial review of petitioner's claim herein was pursuant to 8 U.S.C. § 1421(c), which provides in pertinent part that "[a] person whose application for naturalization under this subchapter is denied, after a hearing before an immigration officer under section 1447(a) of this Title may seek review of such denial before the United States district court for the district in which such person resides in accordance with chapter 7 of title 5...." (Docket No. 2, Order at 1). Judicial review of a final administrative denial of an Application for a Certificate of Citizenship, however, may be sought by way of a declaratory judgment action. 8 U.S.C. § 1503(a). "An alien may obtain judicial review of his claim of derivative citizenship in two ways: by raising it during the course of removal proceedings or by appealing the final administrative denial of the alien's [N-600] application for a certificate of citizenship." *Duarte-Ceri v. Napolitano*, No. 07-CV-500A, 2009 WL 1806694, at *4 (W.D.N.Y. June 23, 2009) (Report and Recommendation of United States Magistrate Judge Leslie G. Foshic, confirmed by District Judge Richard J. Aracora) (quoting *Patino v. Chertoff*, 595 F.Supp.2d 310, 313 (S.D.N.Y.2009) (citing *Hutchinson v. Mukasey*, No. 07 Civ. 10716, 2007 WL 4323006, at *2 (S.D.N.Y. Dec. 10, 2007) (citing 8 U.S.C. §§ 1252(b) and 1503(a))). "An alien may obtain district court review of the final denial of his [N-600] application for a certificate of citizenship pursuant to 8 U.S.C. § 1503(a) (" § 1503(a)), by filing a declaratory judgment action for a judgment declaring him a national." *Duarte-Ceri*, 2009 WL 1806694, at *4 (quoting *Patino*, 595 F.Supp.2d at 313 (bracketed material supplied). § 1503(a) does not, however, allow an action to be brought where "the issue of such person's status as a national of the United States ... arose by reason of, or in connection with any removal proceedings," or "is in issue in any such removal proceeding." 8 U.S.C. § 1503(a). There is no indication in the petition or the documents attached thereto that petitioner/plaintiff's N-600 Application for Citizenship "arose by reason of, or in connection with any removal proceedings," or "is in issue in any such removal proceedings." *Id.*

Marshals Service to serve the summons, petition (complaint) and this order on USCIS as directed below.² Accordingly,

IT IS SO ORDERED that plaintiff's application to proceed *in forma pauperis* is granted, that the application for an order directing service by the United States Marshals Service (Docket No. 4) is granted, and the Clerk of the Court is directed to return to petitioner/plaintiff the \$5.00 filing fee submitted initially by him;

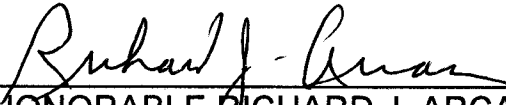
FURTHER, the Clerk of the Court is directed to cause the United States Marshal to serve copies of the Summons, Complaint, and this Order upon the Department of Homeland Security, United States Bureau of Citizenship and Immigration Services without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in plaintiff's favor. The Clerk of the Court is also directed to prepare and issue a summons to the Department of Homeland Security, United States Bureau of Citizenship and Immigration Services, 20 Massachussetts Ave., N.W. Rm 3000, Washington, D.C. 20529;

FURTHER, to ensure that there is no possibility of confusion with respect to service, it is hereby directed that, in addition to the U. S. Marshal service directed above, the Clerk of the Court is also directed to send copies of the

²Because Fed.R.Civ.P. 4(c)(3) provides that the Court shall order service by the U. S. Marshals Service whenever a plaintiff is granted authorization to proceed *in forma pauperis*, petitioner/plaintiff's application for an order directing service by the U.S. Marshals Service (Docket No. 4) is granted.

Summons, Complaint, and this Order by certified mail to the following, pursuant to Rule 4(i) of the Federal Rules of Civil Procedure:

- Attorney General of the United States, Main Justice Building, 10th and Constitution Avenues N.W., Washington, DC 20530;
- Civil Process Clerk, United States Attorney for the Western District of New York, United States Attorney's Office, USAO/WDNY, 138 Delaware Avenue, Buffalo, New York 14202; and
- Department of Homeland Security, United States Bureau of Citizenship and Immigration Services, 20 Massachusetts Ave., N.W. Rm 3000, Washington, D.C. 20529.



HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

Dated: _____

Jan. 4, 2010
~~2009~~